



Q&A: Speech at Homeowner Meetings Restricted

Members have right to speak on any matter placed on the agenda by petition of the voting interests.

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Q: Our homeowners' association board says that Florida law, specifically Section 720.303(2)(b) of the Florida Statutes, does not allow association members to speak during a board meeting unless they have successfully petitioned the board. Then and only then can they speak on the petitioned agenda item. Conversely, some association members argue that this is incorrect and that the law allows members to speak at a board meeting regardless of whether the item has been petitioned or not. What is the correct interpretation of this law? **B.G. (via e-mail)**

A: Section 720 of the Florida Statutes, which is commonly referred to as the Florida Homeowners' Association Act (the Act), provides that members of a homeowners' association (HOA) have the right to attend meetings of the board, and to speak on any matter placed on the agenda by petition of the voting interests, for at least three minutes. As you can see, in the HOA setting, the right to speak is limited by statute to those items placed on the agenda by membership petition. Conversely, the law for condominium associations is quite different. Specifically, members of condominium associations have the right to speak with regard to all designated agenda items at board meetings, although in the condominium setting, there is no

procedure for items to be added to board agendas through membership petition.

The HOA may adopt written reasonable rules governing the frequency, duration, and other manner of member statements, subject to certain limits set forth in the law. The Act further provides that if twenty percent of the total voting interests petition the board to address an item of business, the board must, at its next regular board meeting or at a special meeting of the board, but not later than sixty days after receipt of the petition, take the petitioned item up on the board's agenda. The board must give all members notice of the meeting at which the petitioned agenda item will be addressed, fourteen days in advance. Other than addressing the petitioned item at the meeting, the board is not required to take any other action with respect to the subject of the petition, unless the governing documents require board action as the result of a petition item.

Beyond these statutory requirements, some homeowners' associations dedicate a portion of their agenda to allowing individual members to speak at board meetings, notwithstanding the petition requirement in the law. Further, if the HOA's bylaws permit members to speak at board meetings in general, it is my opinion that such a

provision would be enforceable, notwithstanding the more restrictive nature of the Homeowner's Association Act.

Q: I am on the board of directors at my condominium association and the buildings are in need of new replacement windows. The board proposes to adopt a new replacement window that is energy efficient and more modern in its appearance. However, the windows are part of the unit owners' property and the association cannot make the unit owners change the windows now, but if the unit owners do decide to change windows, they would be required to update to the new, board-approved window. One unit owner claims that the board must obtain a two-thirds vote of all owners to update the window policy. The owner has made the same point about a two-thirds vote being needed to change front doors and remove old carpeting in the hallways. Any light you could shed on this would be appreciated.

D.M. (via e-mail)

A: Your question deals primarily with the concept of "material alterations" of the condominium property, which is a very common issue with condominiums. As you may know, the Florida Condominium Act provides that no material alterations or substantial additions to the common elements may be made, except in the manner provided in the declaration. In the event the declaration does not address this issue, the statute requires that seventy-five percent of all members approve any material alteration to the common elements.

You indicate that the windows are the "unit owners' property." Therefore, I assume that the windows are either defined as part of the "unit" or as "limited common elements." Limited common elements are merely common elements that are reserved for the exclusive use of a particular unit. An interesting provision found in some condominium documents is that material alterations may be made by unit owners to their limited common elements with board approval alone. I find this interesting because in many of the same associations, the declaration says that the

association cannot make material alterations to other common elements without membership approval.

In summary, the answer to your question about the window replacement policy and the window replacement authority can only be answered by referring to your declaration of condominium and determining the voting requirements therein. There may also be a certain amount of leeway for the board, depending on the facts of your situation, to have broader authority when a new style of windows being selected is related to safety upgrades, such as hurricane protection.

FREE COURSE TO COVER REGULATION.

A free course on the regulation of residential condominium and cooperative associations in Florida will be held on Wednesday, March 26, 2008 from 9:00 am to 1:00 p.m. at the Seven Lakes Condominium Association, 1965 Seven Lakes Blvd., in Ft. Myers, FL (across from Bell Tower Shops). The course will be taught by Community Associations Institute (CAI), the designated condominium and cooperative educational provider of the State of Florida's Department of Professional and Business Regulation, Division of Florida Land Sales, Condominiums and Mobile Homes.

The course focuses on how federal and state statutes and regulations impact associations. Participants will review guiding documents such as Florida statutes and legislation including the Condominium Act and Cooperative Act, the Fire Safety Act, and the Florida Administrative Code. The course will also touch on federal laws such as the Fair housing Amendments Act of 1988, the Housing for Older Persons Act of 1995, the Telecommunications Act of 1996, and the Fair Debt Collection Practices Act. Please note that this course does not count for manager CEUs for community association managers.

Registration is not required, but space is limited. To reserve a space, please call Laura Hagan at 727-525-0962 or e-mail fleducation@caionline.org.

Course seating may be limited to one owner occupant per condominium unit based on space

availability. To see a complete list of classes in your area, visit www.caionline.org/florida.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

Send questions to Joe Adams by e-mail to jadams@becker-poliakoff.com This column is not a substitute for consultation with legal counsel. Past editions of this column may be viewed at www.becker-poliakoff.com.